

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

IN RE:

AIR CRASH INTO THE JAVA SEA  
ON JANUARY 9, 2021

MDL NO. 1:23-MD-3072 CMH

ALEXANDRIA, VIRGINIA  
OCTOBER 2, 2023

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE CLAUDE M. HILTON  
UNITED STATES DISTRICT JUDGE

Proceedings reported by stenotype, transcript produced by  
Julie A. Goodwin.

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1 (OCTOBER 2, 2023, 10:00 A.M., OPEN COURT.)

2 THE COURTROOM DEPUTY: Case Number 23-MD-3072,  
3 *In Re: Air Crash Into The Java Sea On January 9, 2021.*

4 Counsel, please note your appearances for the  
5 record.

6 MR. HAMOUDI: Good morning, Your Honor. Mohammad  
7 Hamoudi and Floyd Wisner. We're here on behalf of the Illinois  
8 plaintiffs here today.

9 THE COURT: All right. Good morning.

10 MR. SHULTZ: Good morning, Your Honor. Mack Shultz  
11 with Perkins Coie on behalf of the Boeing Company. I'm joined  
12 by Ben Hatch and Emily Kelley of McGuireWoods.

13 THE COURT: All right. Good morning.

14 I believe we've got two motions here. There's one  
15 for some discovery in order to hear this motion to dismiss, and  
16 I find that there's no showing that there's any need for  
17 further discovery. I'm prepared to deny that motion at this  
18 time, and we'll go forward with the motion to dismiss.

19 **ARGUMENT**

20 MR. SHULTZ: May it please the Court. Good morning,  
21 Your Honor. Mack Shultz on behalf of Boeing.

22 This is a textbook case for dismissal for *forum non*  
23 *conveniens*. This litigation features overwhelming context with  
24 Indonesia. Indonesia has been repeatedly found to be an  
25 available and adequate alternative forum, including an aviation

1 accident litigation where cases against Boeing have gone to  
2 trial in Indonesia on the merits.

3           Indonesia, in this case, is the only place where  
4 all potentially at fault parties can be joined, and Indonesia  
5 offers the greatest access to the key sources of proof that are  
6 needed to decide the plaintiffs' claims on liability, the  
7 defendant's defenses on liability, and damages. And finally,  
8 Indonesia has the greatest public interest in the litigation.

9           There's no reasonable dispute as to the key facts  
10 at issue in this case, Your Honor. All 62 passengers and crew  
11 were Indonesian. It was a flight from Jakarta, Indonesia to  
12 Pontianak, Indonesia. The aircraft crashed into the Java Sea  
13 off the coast of Indonesia. It was operated by an Indonesian  
14 airline in an airplane that was registered and had been  
15 maintained in Indonesia since 2012.

16           The pilots involved were trained in Indonesia, per  
17 the Indonesian aviation regulations, and the accident was  
18 investigated by the Indonesian authorities. And in the final  
19 report from the Indonesian investigators, the causes of the  
20 accident included the piloting on the accident flight itself;  
21 the pilot training with respect to upset recovery, once the  
22 aircraft entered an upset condition; the maintenance by the  
23 airline and its contractors of the aircraft; the safety  
24 management system of the airline, including the failure to  
25 report prior events where the engine throttles had become

1 stuck; and the performance of the airplane systems during the  
2 accident.

3           The accident is a subject of intense public  
4 interest in Indonesia, as one would expect, and the very  
5 geography of Indonesia makes the aviation industry crucial to  
6 that country. It is a country made up of hundreds of different  
7 islands, and the aviation industry is critical to Indonesia.

8           And finally, the airline has reportedly settled  
9 with some of the families and has entered into releases. I've  
10 not seen a copy of those releases. My understanding from  
11 multiple people is that they name Boeing. My understanding is  
12 also that the plaintiffs will challenge the enforceability of  
13 those releases. In our view, that challenge should be heard by  
14 an Indonesian court as the releases are between Indonesian  
15 plaintiffs, an Indonesian airline, and subject to Indonesian  
16 law.

17           Under the *forum non conveniens* test -- and I won't  
18 belabor the point because I don't believe the test itself is  
19 meaningfully contested by the plaintiffs in this case. But  
20 Indonesia is an available and adequate alternative forum.

21           Boeing, as a condition of dismissal, has agreed not  
22 to contest service of process in an Indonesian case that is  
23 refiled after dismissal, has agreed to submit to the  
24 jurisdiction of the Indonesian courts, and has agreed to  
25 respect the final judgment of those courts subject to its

1 rights of appeal.

2 Boeing has submitted evidence that the claims are  
3 not time barred in Indonesia and that the Indonesian court will  
4 accept jurisdiction over these claims. That all makes the  
5 Indonesian courts available for the claims in this case.

6 It's also uncontestable that the Indonesian courts  
7 are adequate. Indonesia provides a remedy. It has a robust  
8 civil law tradition originating in the Dutch colonial era. It  
9 provides a remedy for the types of claims the plaintiffs are  
10 asserting, and U.S. courts have repeatedly held Indonesia is an  
11 available and adequate forum, including in the aviation cases.

12 The next step of the analysis is the -- to  
13 determine the degree of deference that is paid to the  
14 plaintiffs' choice of forum here in the United States.

15 In many cases under the *forum non conveniens*  
16 analysis, the plaintiffs' choice of a forum is entitled to  
17 heightened deference, but in this case it is not. And I would  
18 point the Court to the *Jiali Tang* case, 656 F.3d at 252 to 53,  
19 where in that case it was a case brought in Maryland, and the  
20 plaintiffs were all Chinese citizens and residents. The  
21 alternative forum being considered there was Chinese, and the  
22 Fourth Circuit concluded that the plaintiff selection of that  
23 Maryland forum was not entitled to special deference in the  
24 analysis.

25 In fact, if you look at the *Abad* case from the

1 Seventh Circuit, which is 563 F.3d 663, the plaintiffs, when  
2 they are merely being asked to refile their complaints in their  
3 home forum, the presumption in favor of their selection becomes  
4 a little more than a tie breaker.

5 At that point, under the *forum non conveniens*, the  
6 analysis moves to the balance of the private interest and the  
7 public interest factors. As set forth in Boeing's briefing, we  
8 believe that the private interest factors weigh heavily in  
9 favor of dismissal.

10 Perhaps most importantly, the Indonesian  
11 investigator's report, which has been cited and relied on in  
12 the -- in some of the plaintiffs' complaints, notes the  
13 potential fault of the airline in the accident. And it is  
14 unquestionable that Indonesia is the only forum where the  
15 airline can be brought into the litigation and all parties can  
16 be heard in one proceeding. Boeing would be subject to  
17 jurisdiction there, Sriwijaya would be subject to jurisdiction  
18 there, and the plaintiffs could bring their cases there.

19 The plaintiffs over the weekend submitted an offer  
20 of proof with a lengthy list of paragraphs of information that  
21 they believe is relevant to the *forum non conveniens* inquiry.  
22 I believe much of that information is in fact irrelevant. Much  
23 of it is incorrect, and it could be properly stricken by this  
24 Court as a sur-reply. But notably on page 2 of that document,  
25 the plaintiffs themselves state that all of the evidence and

1 documents and witnesses related to the paragraphs that they  
2 submitted in their offer of proof is within Boeing's  
3 possession.

4           As a condition of dismissal, Boeing has agreed to  
5 bring any documents, any records, any witnesses that the  
6 Indonesian court deems relevant to Indonesia. So all of the  
7 evidence that the plaintiffs themselves say is important would  
8 be available in that Indonesian forum.

9           What they don't talk about in that offer of proof  
10 or in their briefing is where the evidence is for Boeing's  
11 defenses and for the damages side of the case. And it is  
12 unquestionable that that evidence is located in Indonesia.  
13 That's where the airline is. That's where its records and  
14 witnesses are. The airline's counsel submitted a letter that  
15 we included in our -- with our motion before the Court saying  
16 that they will not voluntarily come to the U.S. and participate  
17 in U.S. litigation. Sriwijaya does not fly to the United  
18 States, and there is no basis for asserting jurisdiction over  
19 them in these wrongful death cases.

20           Also, the damages information is clearly in  
21 Indonesia. Everyone on board was Indonesian, so their  
22 employment records, their medical records, the estate  
23 proceedings that took place in the Indonesian courts, that is  
24 all located in Indonesia and is not available in the U.S.

25           Indonesia is not a participant in the Hague



1 Convention or any other international treaty that allows the  
2 U.S. courts to obtain evidence from Indonesia for use in trial  
3 here. And so in terms of the relative ease of accessing the  
4 key evidence, the availability of witnesses, that all weighs  
5 heavily in favor of dismissal. And again, as does the fact  
6 that Indonesia is the only place where the -- all potentially  
7 liable parties can be joined in a single proceeding.

8           With respect to the public interest factors, those  
9 also weigh heavily in favor of dismissal. Indonesia, of  
10 course, has an extremely high interest in this domestic  
11 accident which involved Indonesian citizens and an Indonesian  
12 airline. Virginia and Illinois' interests are comparatively  
13 minimal and the -- that comes through in the *Piper* case when  
14 they were considering -- when the Supreme Court was considering  
15 where the trial arising out of a Scottish accident should  
16 occur, as well as the other cases cited in our brief.

17           Under the public interest factors, one of the  
18 factors is also familiarity with the governing law. The choice  
19 of law decision in this case is potentially very difficult  
20 because of the mix of admiralty jurisdiction and diversity  
21 jurisdiction that exists, the potential for the *lex loci* rule  
22 in Virginia to apply, the potential for the *Lauritzen* test to  
23 apply. But it is clear that Indonesian law will apply to at  
24 least some issues in this case.

25           First, Indonesian law will govern who is entitled

1 to recover for those families where multiple representatives  
2 have filed suit. And even with the settlement of the Virginia  
3 plaintiffs' claims, there is still at least one case where  
4 multiple law firms with different personal representatives have  
5 filed cases on behalf of a single decedent.

6 Also, it is fairly clear that Indonesian law will  
7 govern the issue of the enforceability of the releases. And  
8 certainly the plaintiffs are entitled to challenge the  
9 enforceability of any releases that the airline obtained. And  
10 we're not saying that they're not. We're simply noting that  
11 those releases should be interpreted under Indonesian law and  
12 that the Indonesian courts should have the first attempt to  
13 review them.

14 So looking at all of the issues in this case, the  
15 overwhelming contacts with the Indonesian forum, the case law  
16 that's laid out in our brief, the well-developed federal case  
17 law on *forum non conveniens* in aviation accident cases, we  
18 believe this case is appropriate for dismissal under for *forum*  
19 *non conveniens*.

20 I am happy to answer any questions the Court has.

21 THE COURT: All right. Thank you.

22 **ARGUMENT**

23 MR. HAMOUDI: Good morning, Your Honor.

24 I want the Court respectfully to think about this  
25 case in two ways, and it's a bifurcated manner. We have

1 liability and then we have damages. And right now Boeing is  
2 disputing liability, so I'm going to focus my presentation on  
3 that a great deal, then I'll deal with the aspect of damages.

4 The defendant is asking the Court to do something  
5 unprecedented in an American court of law. The burden on this  
6 defendant is a heavy burden on every element of the *forum non*  
7 *conveniens* motion. And the rules make it clear a dismissal for  
8 *forum non conveniens* is the exception. It is not the rule.

9 There must be a strong showing that the alternative  
10 forum would be significantly more convenient, and there must be  
11 a strong showing that that alternative forum will better serve  
12 justice than the one chosen by us. And there must be a strong  
13 showing that the present forum imposes an undue burden on this  
14 defendant.

15 This defendant is worth over a hundred billion  
16 dollars. Its product exists everywhere on the world, a product  
17 that shares a virtual monopoly with another company in  
18 international commerce. So to say that this defendant faces  
19 any burden in defending its product in an American courtroom is  
20 not credible.

21 The Court, Your Honor, should afford us great  
22 deference to our selected forum. Because as laid out in our  
23 offer of proof, 90 to 95 percent of the liability evidence in  
24 this case associated with this product is in the United States.

25 Since the first actions in this case were filed in

1 Illinois in February of 2021, the plaintiffs have been  
2 collectively working together to investigate the history behind  
3 this particular product's defect and how that history overlaps  
4 with the Max cases. And what we've learned is that there is an  
5 overlap with the Max product and our product.

6 What that investigation, effort, and sources  
7 revealed is that 90 to 95 percent of our products liability  
8 case against Boeing involves witnesses and evidence in the  
9 United States, and that that evidence was generated during the  
10 time when there was a culture of concealment at this  
11 defendant's company. And that culture, Your Honor, existed  
12 during the time when there were autothrottle defects with other  
13 planes.

14 We contend that the autothrottle is a defective  
15 product, and a secondary computer system that is supposed to  
16 respond when the autothrottle gets stuck is also defective.  
17 And defendant has known this for years, but the costs  
18 associated with changing it so that it does not get stuck is  
19 not economically worth it for this defendant.

20 And rather than confront the defect, the internal  
21 response to the autothrottle failure by Boeing is that pilots  
22 rely too much on automatics. And they blame the pilots, which  
23 is what they did here today. They say that it is the pilots'  
24 fault. Those pilots are trained by Boeing, here in the United  
25 States.

1           This is the precise criticism that was levelled  
2 against the airlines and pilots in the Max cases, and that  
3 criticism is uniquely focused on these pilots. That evidence  
4 came out in the Max cases, and that evidence exists here.

5           The defendant sold the product and marketed it for  
6 its automatics, telling its buyers that the automatics were  
7 innovative, safe, and made flying easier. Then when the  
8 pilots, who were trained by this defendant, rely on that  
9 marketed feature, they blame them for the very thing that  
10 persuaded the company to buy that system in the first place.

11           And common sense is telling us that Boeing, Your  
12 Honor, is using FNC to avoid ever having to respond to the  
13 liability aspect of these claims on the merits because it knows  
14 that if FNC is granted, it is highly unlikely that plaintiffs  
15 will be able -- ever be able to prosecute our complex product  
16 liability claims in Indonesia because there's no discovery  
17 there.

18           Boeing already has all the evidence it claims to  
19 need from Indonesia because it was actively participating in  
20 the accident's investigation. All the facts, Your Honor, but  
21 not the conclusions, set out in a report are admissible in  
22 evidence in the United States.

23           They had access to not only the investigation, but  
24 also the NTSB, British and Singapore investigators. We were  
25 not allowed to be present during the investigation. We will

1 not be able to access evidence from nonparties located outside  
2 Indonesia because the only way that discovery is accessible is  
3 through a United States courthouse's subpoena power. Former  
4 Boeing employees who were involved with the development and  
5 manufacture of this product, we will not be able to bring them  
6 to Indonesia.

7           Your Honor, there's no inconvenience for Boeing to  
8 have to defend its product in its home forum in America.  
9 Boeing is competently and effectively defending its product in  
10 federal court in Illinois, in federal court in the Northern  
11 District of Texas. In fact, there's a case, a specific  
12 example, of how fast this defendant can marshal resources in  
13 response to a claim.

14           We filed pleadings with the Court in a remand  
15 dispute to show that Boeing's attorneys represented to  
16 courts -- other courts that their offices were in Illinois.  
17 Within a couple of weeks this defendant marshalled the  
18 resources of numerous attorneys to respond to that.

19           And you can be sure that Boeing's attorneys in  
20 Illinois already have the documents related to this crash in  
21 their possession ready to immediately disclose following a  
22 discovery schedule issued by this Court.

23           This defendant has been on notice, Your Honor,  
24 since February 2021, because we filed suit in Chicago but did  
25 not ever file an FNC motion and still has not. We have raised

1 that issue. We have placed Boeing on notice, and they still  
2 have not done nothing.

3 That failure since February 2021 has been  
4 detrimental to us because we have relied on their inaction,  
5 have been investigating, spending resources on the theory of  
6 our case for a significant time, only to learn that they're  
7 interested in creating piecemeal litigation. Our expectation  
8 that no FNC motion would be filed was justified and reinforced  
9 by the fact that Boeing did not file an FNC motion, either the  
10 Lion Air crash or the Ethiopian air crash that are in federal  
11 court in Illinois.

12 The law on FNC is clear, Your Honor. The Court  
13 must avoid creating piecemeal litigation, and Boeing's motion  
14 certainly will create piecemeal litigation.

15 The precise reason why the Court granted the FNC  
16 motion in the Supreme Court case that Boeing is relying on,  
17 *Sinochem*, is the reverse and precise reason why it should deny  
18 it in this case. There, judicial economy was disserved by  
19 continuing litigation in America given that proceedings had  
20 long launched in China. And the gravamen of the action in  
21 China was exclusively a question of Chinese law.

22 Here, judicial economy will be disserved by  
23 creating litigation outside of America, given proceedings that  
24 have continued in state court in Chicago since February of  
25 2021. And the gravamen of the action here in the United

1 States, a products liability action, is a question of American  
2 law.

3 And unlike the cases cited by Boeing, the product  
4 we are prosecuting was not manufactured and distributed by a  
5 foreign company, as it was in the Fourth Circuit case of *Jiali*  
6 *Tang*. And unlike *Piper*, the Supreme Court case, the accident  
7 report in this case did not find that the American product was  
8 not defective. It found that the autothrottle did suffer a  
9 defect.

10 Here, it is undisputed that Boeing developed,  
11 produced, tested this plane in the United States, and it is  
12 undisputed that any proof of possible design or manufacturing  
13 defect would center around events occurring in the United  
14 States.

15 Your Honor, what that means is that this product is  
16 currently being used by Americans in America. There is a  
17 significant public interest in having a United States court  
18 decide issues concerning tortious conduct occurring in this  
19 country. Our products liability tort -- torts asserting a  
20 defect in the manufacture and design of components of the  
21 aircraft and defects, which should have been overhauled years  
22 ago given the numerous failures that occurred in prior cases  
23 involving the same type of plane cannot be presented in  
24 Indonesia. Indonesian law is silent on the liability of a  
25 manufacturer of an injury for injury or death of passengers



1 rooted in a products liability action. That area of the law  
2 has been developed over a hundred years here in the United  
3 States.

4 Because our theories of liability are not  
5 recognized there, it will be impossible for us to admit  
6 historical evidence or even obtain historical evidence to  
7 demonstrate that this particular products defects was caused by  
8 the same culture of concealment and shortsightedness which  
9 resulted in the Max defect. That's a critical part of our case  
10 because, Your Honor, the case's focus is not just a product,  
11 but it is also the defendant.

12 Nowhere in Boeing's dec. motion or its declaration  
13 does it delineate precisely who the witnesses are that possess  
14 testimony relevant to our complaints or detail out a list of  
15 documents or evidence stating the same. They've had our  
16 complaints for a long time. They have not disclosed a shred of  
17 discovery. They have objected to everything.

18 And more important, 90 to 95 percent of our  
19 evidence underlying our proof is in English. They have not  
20 even been -- certifiably translated it into Indonesian for  
21 consumption by an Indonesian court. We're not going to have  
22 access to our evidence for years because that process is going  
23 to take a very long time. And the cost of that alone is going  
24 to be astronomical, and we will have to shoulder that expense.

25 The public interest, the American public interest

1 is pronounced in this action because this action involves a  
2 unique defendant. For over four decades, Your Honor, not a  
3 single federal court has been asked by a defendant or has  
4 granted an FNC motion after defendant was found to have  
5 committed fraud by a federal judge, after that defendant was  
6 federally indicted by the United States government.

7 Just last week the defendant agreed to settle a  
8 claim with the United States to avoid admitting to making false  
9 claims involving the manufacture of another plane.

10 I have searched Westlaw, Lexis up and down, Your  
11 Honor. I cannot find a single case where a federal judge has  
12 granted an FNC motion without discovery under these  
13 circumstances.

14 Your Honor would be making an unprecedented  
15 decision. The public interest factor in this action proceeding  
16 in the United States is equal to the *Lion Air* case and an  
17 Ethiopian case currently in federal court in Illinois, and even  
18 greater than those cases because the defendant's product failed  
19 yet again two days after it executed a deferred prosecution  
20 agreement.

21 That's the liability aspect, Your Honor. That's  
22 got to happen in the United States.

23 It would be another thing if they would admit fault  
24 and say, take your damages case to Indonesia. There would be  
25 good arguments on both sides, but not the liability aspect of

1 the case.

2 Now, I want to talk about damages.

3 I walked into the Alexandria courthouse, and I saw  
4 that -- Lady Justice, justice delayed is justice denied. And I  
5 thought that may be an indication of what this courthouse  
6 stands for where the people colloquially refer to it as the  
7 Rocket Docket, but -- but I think it means more than that.

8 There are injustices occurring over in Indonesia,  
9 Your Honor, which clearly demonstrated it's not an adequate  
10 forum. This letter from the Kennedys Law Firm making  
11 representations that SJY182 would contest a personal  
12 jurisdiction or service of process cannot be legally considered  
13 by this court because it is not a declaration. An attorney  
14 cannot consent or deny to the existence of jurisdiction or  
15 process of service unless they declare they're doing so as an  
16 agent of a corporation. That is the law in the United States.

17 And the case that collects some of those cases is  
18 case *Stryker*, S-T-R-Y-K-E-R, 891 F.3d 615. SJY2 is subject to  
19 the Court's jurisdiction because its pilots were trained by  
20 Boeing.

21 SJY182 is in bankruptcy proceedings. Someone, some  
22 entity or some agent in Indonesia believes that they have  
23 agency authority to release Boeing from any liability in this  
24 case in any court in the world in exchange for preexisting  
25 legal obligations. Someone, some entity or some agent who

1 believes they have agency authority with respect to Boeing  
2 approached families to sign releases when they were under  
3 serious emotional distress. And, Your Honor, they continue to  
4 contact these families even though as a matter of public record  
5 they're represented by counsel.

6 Your Honor, at some point in your career you were a  
7 lawyer. Imagine that you represent a client and somebody is  
8 contacting them and trying to get them to sign legal documents.  
9 That is not justice. There's something seriously wrong with  
10 that.

11 Both sides are ably represented here by American  
12 lawyers, and both sides want and deserve an expedited and just  
13 process in the United States to determine whether or not this  
14 product is defective. We're entitled to a fact-finding process  
15 that discovers whether what occurred with the Max cases  
16 occurred in this case, given that events that occurred there  
17 overlap in time and proof.

18 We take that position that it -- the product is  
19 defective, and we take the position that that defect occurred  
20 because of the same culture of concealment. And they're  
21 entitled to take the position that it is not. And we're in  
22 dispute, and that's why we have juries.

23 Grant us discovery, Judge. Let us do our jobs.  
24 Though I cannot guarantee, I'm going to tell you with some  
25 degree of collective confidence backed by lawyers here who have

1 been doing this for decades, that prosecuting these products  
2 liability actions in American courts will make our sky safer,  
3 and they're going to avoid further tragedy.

4 Thank you, Your Honor.

5 MR. WISNER: Your Honor, Floyd Wisner. May I be heard  
6 on behalf of my client, the plaintiffs?

7 THE COURT: Yes.

8 MR. WISNER: I promise not to override -- thank you.

9 ARGUMENT

10 MR. WISNER: I just want to mention a couple of things  
11 that my colleague has not mentioned.

12 First of all, Judge, as you probably know, the U.S.  
13 Supreme Court first recognized *forum non conveniens* in the *Gulf*  
14 *Oil versus Gilbert* case. And in that case, they said the  
15 purpose of *forum non* was to ensure that a plaintiff does not  
16 use his right to choose forum to vex, harass, or oppress the  
17 defendant, so it was for that purpose only. And now it's been  
18 turned on its head by Boeing and other defendants over the  
19 years to use it to substitute their own choice of forum for  
20 plaintiffs.

21 It's clear that we have the right to choose the  
22 forum, and we have deference to that choice. Now, maybe we  
23 don't have the same substantial deference as a U.S. citizen,  
24 but U.S. courts aren't open just to Americans. They're open to  
25 other people around the world, too, to sue U.S. defendants.

1 And reduced deference does not mean no deference, and the  
2 courts have held that. And there's deference afforded to a  
3 plaintiff's choice of forum where there's a good reason for  
4 that choice of forum.

5 And the reason here is that we're suing Boeing in  
6 Boeing's home court. How could a U.S. defendant say its own  
7 home court is not convenient and they'd rather go thousands of  
8 miles away to defend their own product? Really? I don't think  
9 so.

10 The only place we could have chosen -- could have  
11 sued Boeing in the first time, at the time this suit was filed,  
12 was in the United States because Indonesia only has  
13 jurisdiction over Boeing because Boeing now consents to it.  
14 Now that we've sued them, they'll consent to being sued in  
15 Indonesia.

16 Their own lawyer, who submitted a declaration, says  
17 that Indonesia has jurisdiction because the tortious conduct  
18 occurred in Indonesia. Tortious conduct. Not the tort, not  
19 the injury. The tortious conduct.

20 But that statute, Indonesian statute, does not  
21 apply because the tortious conduct here occurred in the United  
22 States in the design and manufacture of this aircraft. The  
23 tortious conduct was in the U.S., so our plaintiffs are  
24 entitled to deference in their choice of forum.

25 Further, Judge, that calls into question the

1 availability of the alternative forum of Indonesia because  
2 there is case law which says that there must be two available  
3 forums at the time the suit is filed, and plaintiff chose the  
4 inconvenience one in order to vex, harass, or oppress  
5 defendant. Here, there was only one forum we could have sued  
6 Boeing in the United States, and so then we start off with  
7 that. They don't even meet their burden of proof as to the  
8 choice of forum and the availability of the choice of forum.

9           And then we get into the private and public  
10 interest factors. And they haven't met their burden of proof  
11 on that, Judge. As my colleague mentioned, it's a very  
12 substantial, very heavy burden of proof. It's not an  
13 even-Steven. They have to -- there's one case that says you  
14 start off with the scale of justice in favor of plaintiff and  
15 then the defendant has to overcome that.

16           They don't do that here. One of the private  
17 interest factors is the -- who's a willing witness and who's  
18 unwilling.

19           Boeing says nothing about that. They submit this  
20 letter from Anita Quay, a lawyer with this international law  
21 firm of Kennedys. I've known Ms. Quay for many, many years.  
22 She's not the lawyer for Sriwijaya Air. She doesn't represent  
23 them. She represents their insurers in London.

24           You know where Boeing is insured, Judge? In the  
25 London market. Isn't that coincidental.

1           So what happens is Boeing didn't say they went to  
2 Indonesia and talked to any of the Sriwijaya air employees and  
3 said, Are you willing to come to the United States? And they  
4 said, no. That's not what they're saying.

5           They went to their friend, Ms. Quay, and said: Hey,  
6 will you give us a letter that says you're -- that you're  
7 insureds, employees, will not do it?

8           She said: Sure.

9           She's done that in other cases I've had. Other  
10 insured attorneys have done that. It's not surprising, but  
11 it's not proof of their private interest factor.

12           I wanted to mention, too, Judge, about these  
13 releases. That ties it about Ms. Quay's involvement here.

14           Boeing says it hasn't seen the releases. I say,  
15 come on. All they have to do is ask Ms. Quay, their friend, and  
16 she'll give them to them. They haven't said they've asked her  
17 and she's refused.

18           And I can tell you this, those releases probably do  
19 include Boeing, because what my colleague said is true. What  
20 happens in these air crash cases, and I've had a lot of them in  
21 Southeast Asia in impoverished countries.

22           As my colleague said, the insureds' attorneys or  
23 representatives go to these people when they're suffering and  
24 they're grieving, right after the crash. It would be illegal  
25 under U.S. law. But they go there, and some of these people



1 have lost their one wage earner for the family. They're in  
2 dire straits.

3 And they say: Hey, we'll give you some money.  
4 It's a paltry amount, \$60,000, \$50,000 for loss of a life. And  
5 they say: Sign this document.

6 They don't even know what they're signing. And  
7 sure enough, it's not only the airline, but it's Boeing and  
8 every component manufacturer known to God. It's all in there.

9 So, the releases here are not an issue. It's going  
10 to include Boeing, I'm pretty sure of that. But Boeing can get  
11 those releases and they can argue them.

12 And to say that those releases are going to be  
13 decided by an Indonesian court, that's not possible. We're  
14 talking about a release of a U.S. defendant, Boeing. It's  
15 going to be decided by Your Honor, or a judge like you here in  
16 the United States. It's not going to be decided under  
17 Indonesian law. Maybe the release of Sriwijaya Air is decided  
18 under Indonesian law, but not the release of a U.S. defendant.

19 Damages. They talked about damages and needing  
20 damages information of Indonesia. Damages is our burden of  
21 proof. We have to bring it to the United States. If we don't,  
22 that's in their favor. Damages, the lack of -- and there's  
23 cases that say that, that you can't take into account  
24 plaintiff's burden of proof in deciding a *forum non conveniens*  
25 motion.

1           A state proceeding. That's another red herring.  
2 They talk about how there's going to be a state proceeding in  
3 Indonesia. There's issues about that. Not true.

4           I had a case years ago. It's called *Wilson versus*  
5 *Sundstrand* in an Illinois Federal District Court in the  
6 Northern District of Illinois --

7           THE REPORTER: Can you slow down.

8           MR. WISNER: I'm sorry. I'm originally from Chicago  
9 and I talk quickly. Apologize.

10          THE REPORTER: Can you say that case again?

11          MR. WISNER: *Wilson versus Sundstrand*,  
12 S-U-N-D-S-T-R-A-N-D.

13           And the Court said: You know, Judge, there are no  
14 state proceedings in Indonesia. They don't have that there.

15           What you do is you can prove that you have the  
16 proper party representative by consent of all the family  
17 members to the one person acting on their -- excuse me, on  
18 their behalf. So, that's all been resolved. There's no issue  
19 about a state proceedings. That's just a red herring here.

20           I do want to mention, too, that they -- Boeing  
21 mentions in their brief about how, yes, there's liability  
22 evidence in Washington or California, but not in Illinois or  
23 Virginia. Now, what they don't talk about is the *Mercier*,  
24 M-E-R-C-I-E-R, decision, Court of Appeals decision, which says  
25 in an international *forum non conveniens* case, the proper

1 comparison is between the United States and Indonesia, not  
2 Illinois or Virginia and Indonesia because Boeing is not  
3 seeking to move this to another state in the United States.  
4 They're seeking to remove it to -- to Indonesia, so the proper  
5 comparison is between the countries. And the evidence here, as  
6 my colleague saw -- talked about was that all of that liability  
7 evidence is clearly in the United States.

8           And I do want to reiterate about, this case, you  
9 know, I'm -- I listened to Mr. Shultz, who I have known for  
10 years, too, and, boy, it seems like he's making a point. This  
11 is an Indonesian crash of an Indonesian airline, Indonesian  
12 victims, investigated by Indonesian authorities. I'm sure Your  
13 Honor must be thinking, what's this case doing in my court?

14           But this case has nothing to do with convenience,  
15 Judge. It has to do with them going for the home run. They  
16 want to avoid ever having to respond to any kind of decision or  
17 argument on the merits because they know that if they convince  
18 Your Honor to grant *forum non conveniens*, this case is done.  
19 No one is going to be able to go to Indonesia and prove a  
20 complex liability case in the absence of discovery. It's just  
21 not done.

22           They mention one case. There's one case in my  
23 career where I remember that plaintiffs went to Indonesia after  
24 losing *forum non* in the United States, which is called the  
25 *Mandala*, M-A-N-D-A-L-A, case. What they don't mention in their

1 brief is that after a long time litigating that case in  
2 Indonesia plaintiffs lost. And so plaintiffs' attorneys in the  
3 United States know that. No one is going to Indonesia if Your  
4 Honor grants *forum non conveniens*. This case is over and  
5 they've avoided all liability.

6           Again, Your Honor, they don't need any evidence  
7 from Indonesia. They've got it all already. I'm confident of  
8 that because they are a participant in the accident  
9 investigation. And they're not just a participant, Judge. We  
10 have to understand how these accident investigations work in  
11 Third World countries.

12           That Indonesian commission, the accident  
13 investigation commission, they don't have aeronautical  
14 engineers on staff. They're manned by career politicians and  
15 bureaucrats. So who do they invite in to lead -- to  
16 participate in the investigation? The manufacturer, the NTSB,  
17 the U.S. NTSB through Boeing as it's an accredited, technical  
18 representative.

19           And Boeing, because it has experts, it takes over.  
20 But it's kind of odd, it's more than odd how these  
21 investigations are run, Judge.

22           It's like the police having a criminal suspect in  
23 mind and calling them in and saying: Hey, can you help us  
24 investigate who committed the murder?

25           And you know what? He comes up and says: Well, it

1 wasn't me.

2 And that's what we have with Boeing. They lead  
3 that investigation. It's not just they're a participant.  
4 They're a leader, Judge.

5 And when they say -- we wanted to take the  
6 deposition of their affiant, Mr. McIntosh, who's head of their  
7 safety investigation units at Boeing, who I've deposed before.  
8 And he -- he says: Well, we don't have -- we did participate  
9 in some of the interviews, but not all of them. But we got  
10 some of the documents, but not all of them.

11 I can practically guarantee, Your Honor, they got  
12 what they wanted. If he didn't participate in some interviews,  
13 it's because he wasn't interested. If he didn't get some of  
14 the documents, he wasn't interested.

15 They weren't denied him. Indonesia would never  
16 deny somebody like Boeing access to anything Boeing wanted.  
17 So, number one, Boeing has all the evidence it needs.

18 Number two, all the factual evidence -- and you can  
19 tell from reading their brief, they take it all from the  
20 accident investigation report. That is all admissible in  
21 evidence. We probably would end up stipulating to it.

22 So everything they need they either have or it's in  
23 the report as a public record and it's admissible in evidence.  
24 What do they need from Indonesia?

25 In contrast, Courts have said: You know, a

1 plaintiff can bring its evidence anywhere. A defendant can  
2 bring its evidence anywhere. What about -- what's crucial is  
3 the third party of a nonparty evidence. Here, that's in United  
4 States, NTSB, component manufacturers in the U.S., Singapore  
5 investigators, and UK investigators.

6 We're not going to be able to get that in  
7 Indonesia. They're not subject to any kind of subpoena power.  
8 In fact, if Boeing was really interested in getting all the  
9 facts before it, it would want this court. Because what -- no  
10 matter what you say about the U.S. judicial system, what we do  
11 have is a great system of discovery.

12 They have no discovery there. How would we ever  
13 prove that, and how would we ever get that nonparty  
14 information?

15 We talk -- they talk about -- my last thing I'm  
16 going to say, Judge, is about the public interest factors.

17 Choice of law. There's no -- been no choice of law  
18 on determination yet. And Your Honor, like all federal court  
19 judges, can handle choice of law determinations, and if  
20 necessary, apply forum law. I'm sure it's nothing unusual to  
21 Your Honor. Your Honor can do that.

22 I mention there's no issue of proper parties under  
23 that *Wilson versus Sundstrand* case. And as far as public  
24 interest, I'll go back to what my colleague said. This case  
25 is -- should be very important to Americans.

1           You know the *Lion Air* case where Boeing chose not  
2 to file a *forum non conveniens* motion -- to my surprise -- all  
3 Indonesians on board. The *Ethiopian Air* case where they also  
4 chose not to file a *forum non conveniens* motion, one American  
5 on board.

6           But Americans cared. Americans cared about both of  
7 those cases. It was all over the news. And they would care  
8 about this if they heard about it. If they heard what kind of  
9 airplanes it flew, it would scare the heck out of them. May  
10 not want to fly these aircraft anymore.

11           So, Your Honor, what we'd like, what we're asking,  
12 pleading with the Court, please look behind this smoke screen  
13 of Indonesian airline, Indonesian plaintiffs, Indonesian  
14 investigation. Let's look to the real facts. What's this case  
15 really about? It's them going for the home run. They want to  
16 avoid all liability. They never want to correct the defects in  
17 this plane. They never want to answer for it, if they can get  
18 a simple *forum non conveniens* dismissal by this Court.

19           Thank you for your time, Judge.

20           THE COURT: All right.

21                           **FURTHER ARGUMENT**

22           MR. SHULTZ: Your Honor, Mack Shultz again for Boeing.  
23 I'll be brief in my remarks.

24           First of all, the plaintiffs seem to focus a great  
25 deal on the Max accidents and *Lion Air* and *Ethiopia*.

1           To be clear, the aircraft at issue here was  
2 delivered in 1994, 20 years before the Max aircraft were even  
3 designed, let alone delivered, let alone the accidents. The  
4 system in the -- at issue in the Max accidents does not exist  
5 on this aircraft and has never existed on this model aircraft.  
6 They are simply different.

7           Second, plaintiffs in their argument emphasize the  
8 fact that the product was manufactured here in the U.S., that  
9 Boeing made the plane here in the U.S.

10           But *Piper*, the Supreme Court itself said that:  
11 Having a trial where the product was manufactured would be  
12 likely to have only insignificant, incremental deterrence on  
13 domestic manufacturers.

14           And if you look at the other cases cited in our  
15 brief, they show the courts repeatedly holding that the country  
16 where the injury occurred has the greatest interest in the  
17 resulting product liability litigation.

18           Plaintiffs' counsel also seem to argue that the  
19 Court should focus only on the plaintiffs' claims on liability,  
20 not the defendant's defenses. That is -- squarely been  
21 rejected by the federal courts.

22           I would point to the *Tazoe* case, T-A-Z-O-E, from  
23 the Eleventh Circuit, 631 F.3d 1321 at 1332, and the *Clerides*  
24 case from the Seventh Circuit, C-L-E-R-I-D-E-S, 534 F.3d at  
25 629. They don't address how Boeing is supposed to try and



1 prove that the airline is at fault when all of the airline's  
2 documents and witnesses are in Indonesia beyond the subpoena  
3 power of this Court and not subject to the Hague Convention.

4           Your Honor, at the end of the day, the doctrine of  
5 *forum non conveniens* is an exceptional tool, but one of the  
6 areas where the federal courts and the Supreme Court have been  
7 clear and consistent is that for foreign aviation accidents,  
8 like this one, this is one of the circumstances where *forum non*  
9 *conveniens* dismissal is appropriate because it is only in the  
10 foreign jurisdiction that all the potentially liable parties  
11 can be brought together and where the key evidence and  
12 witnesses can be assembled in one courtroom.

13           Thank you.

14           THE COURT: All right.

15           Well, it appears to me as I look -- consider the  
16 factors that you-all have addressed here that obviously  
17 Indonesia is an available forum. There is perhaps some  
18 question about whether or not it's adequate. You say it's the  
19 only place it can be. The plaintiffs on the other hand say  
20 it's not adequate because they can't get the discovery that's  
21 involved. That's an issue to consider.

22           The question you've raised about the plaintiffs'  
23 choice of forum, there's some disagreement as to how much  
24 deference ought to be given to the plaintiff in the choice of  
25 forum. That can perhaps be debated, but it's clear that the

1 plaintiffs decided to file here and that this is not an  
2 inconvenient forum for them.

3           This is the defendant's home forum. And it seems  
4 to me when you start balancing the private interest involved  
5 here, the plaintiffs have chosen to be here. This is the place  
6 where the defendant resides, where they operate, where the bulk  
7 of the evidence involved in the allegations of this case came  
8 about, and where the evidence would be and the witnesses would  
9 be.

10           As to the public interest that may be involved, it  
11 seems to me that that comes out equally. These are planes that  
12 are all over the world. We have very keen interests in the  
13 United States as to what these products, how they are built and  
14 what claims may come about them. I don't find that there's  
15 any -- any showing here that the public interest would be any  
16 different than from here to Indonesia, and that comes out in  
17 the balance. And when I -- when I weigh that out, I've come to  
18 the conclusion that this motion to dismiss should be denied.

19           Now, I have one other thought on my mind. It's  
20 time that I enter a discovery order in this case. And I have a  
21 standard order that I enter which provides for four months of  
22 discovery. Is that going to be sufficient for you-all?

23           I normally don't ask people that because as a --  
24 this case is a little different, so I might consider modifying  
25 it a bit.

1 MR. WISNER: Judge, do you think we could have an  
2 opportunity to talk with Mr. Shultz on the meet and confer and  
3 get back to you really quickly about that? I suspect we'd want  
4 to ask you a little bit of an extension on that, not much. Can  
5 we talk about it, or do you need us to give you an answer now?

6 THE COURT: No. You can talk about it. And how long  
7 do you want to do that? Because I'm going to be here this  
8 week, but after that, I'm going to be gone for the two weeks  
9 after. If you can get back to me --

10 MR. WISNER: We can get back to you right away, this  
11 week.

12 Right, Mack?

13 MR. SHULTZ: Yes, Your Honor.

14 THE COURT: Okay. Why don't you do that, and I'll  
15 consider whatever you-all want to do.

16 MR. WISNER: Sounds good.

17 MR. SHULTZ: Thank you, Your Honor.

18 MR. HAMOUDI: Thank you, Your Honor.

19 MR. WISNER: Thank you, Judge.

20 THE COURT: All right. Thank you-all. We'll adjourn  
21 tomorrow morning at 10:00 o'clock.

22 THE LAW CLERK: All rise.

23 (PROCEEDINGS CONCLUDED AT 10:50 A.M.)

24 -oOo-

25

1 UNITED STATES DISTRICT COURT )  
2 EASTERN DISTRICT OF VIRGINIA )  
3

4 I, JULIE A. GOODWIN, Official Court Reporter for  
5 the United States District Court, Eastern District of Virginia,  
6 do hereby certify that the foregoing is a correct transcript  
7 from the record of proceedings in the above matter, to the best  
8 of my ability.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action in  
11 which this proceeding was taken, and further that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

14 Certified to by me this 5TH day of OCTOBER, 2023.  
15  
16  
17

18 /s/  
19 JULIE A. GOODWIN, RPR  
20 Official U.S. Court Reporter  
21 401 Courthouse Square  
22 Eighth Floor  
23 Alexandria, Virginia 22314  
24  
25

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